

### **REMARKS/ARGUMENTS**

Claims 7-27 remain in this application. The Office Action of May 17, 2004 contained the following notices of allowability and rejections:

1. Claims 7-10 and 18-27 are allowed;
2. Claims 12, 15 and 17 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims;
3. Claims 11, 13, 14 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,382,411 ("Svedman") in view of U.S. Patent No. 5,149,331 ("Ferdman et al.").

These are addressed in turn below.

#### **1. Allowance of Claims 7-10 and 18-27**

Applicants thank the Examiner for the allowance of claims 7-10 and 18-27.

#### **2. Objection to Claims 12, 15 and 17**

Claim 12 has been rewritten in independent form including all the limitations of the base claim. Accordingly, claim 12 is submitted to be in condition for allowance. Claims 15 and 17 depend directly or indirectly on amended claim 12, and therefore are submitted to be in condition for allowance at least for the same reasons as applied to claim 12.

**3. Rejection of Claims 11, 13, 14 and 16 under 35 U.S.C. 103(a)**

Claims 13 and 14 have been canceled. Claim 11 has been amended to incorporate the limitations of dependent claims 13 and 14. Claim 11 was rejected inasmuch as Svedman was cited for disclosing a negative pressure source, a pad **capable** of placement within a wound of a mammal, a drape (shell) **capable** of sealing and enclosing the pad on the wound for maintaining a reduced pressure within the wound, and a fluid communication means for communication between the negative pressure source and the pad. Ferdman et al. was cited for its disclosure of a heating element in a wound-healing device for the purpose of heating the pad to stimulated wound healing.

Amended claim 11 now includes the limitations of claims 13 and 14. Neither Svedman not Ferdman et al. teach, disclose or suggest an apparatus as claimed in claim 14 or claim 16. In particular, as stated in the specification, the formation of at least two sheets having a plurality of apertures fixedly connected such that said apertures form a plurality of fluid channels is **critical** to the invention. The specification clearly supports this conclusion. Any heating element capable of heating the pad would be an improper substitution, inasmuch as the benefits from the aperture/channel design, set forth in the specification and claims, are critical to the function of the invention.

“The apertures allow the transpiration of moisture from the patient’s skin while the channels allow the circulation...of warm or cool water, as required, through the pad for the heating of cooling thereof.” Page 5, ll. 26-30. By providing the localized heating (or cooling), which is made effective by the apertures and channels in the formation of the two sheets, “the overall inflammatory response can be synergistically accelerated to produce rapid capillary

occlusion and earlier initiation of the cleanup and rebuilding stages.” Page 5, ll. 15-19. *See also* page 3, ll. 17-23; FIGURE 2. Thus, the dual purpose of the apertures 19 and channels 20 for allowing the transpiration of moisture from the patient’s skin while allowing circulation of warm or cool water through the pad is a critical teaching of the present invention that is not taught, shown or otherwise disclosed in the cited art, and no viable substitution can be made by one with routine skill in the art, and achieves the objects of the present invention of improving therapy modalities through *controlled* acceleration or retardation of the inflammatory response. *See* page 2, ll. 23-30.

Accordingly, amended claim 11 and claim 16 are submitted to be in condition for allowance for at least these reasons.

**SUMMARY**

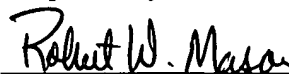
In view of the above, it is submitted that the claims are now in condition for allowance. Reconsideration and withdrawal of the rejections and objections is hereby requested. Allowance of Claims 7-12, 14-27 at an early date is solicited.

If upon consideration of the above, the Examiner should feel that outstanding issues remain in the present application that could be resolved, the Examiner is invited to contact the undersigned at the telephone number indicated to discuss resolution of such issues.

If any charges or fees must be paid in connection with the foregoing communication (including but not limited to the payment of an extension fee, information disclosure statement fee or issue fees), or if any overpayment is to be refunded in connection with the above-identified application, any such charges or fee, or any such overpayment may be respectively paid out of, or into, the Deposit Account No. 50-0326 of Kinetic Concepts, Inc. Please construe this authorization to pay as the necessary Petition or request, which is required to accompany the payment. A copy of the Fee Transmittal form PTO/SB/17 is included for accounting purposes.

Applicant respectfully requests favorable consideration.

Respectfully submitted,



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